

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

MARK H. FRYE and LISA FONNER,

CIVIL ACTION NO.: 5:17-CV-88

Plaintiffs,

Hon. Frederick P. Stamp, Jr.

v.

THE MARSHALL COUNTY COAL COMPANY,  
a Delaware Corporation and the MCELROY  
COAL COMPANY, a Delaware Corporation,

Defendants.

**JOINT MOTION FOR STAY AND/OR CONTINUANCE**

NOW COME the Plaintiffs, Mark H. Frye and Lisa Fonner, and Defendants, The Marshall County Coal Company and McElroy Coal Company, and for their Joint Motion for Stay and/or Continuance, state as follows:

1. This matter, which involves allegations of coal mine subsidence, is currently set for trial on July 31, 2018.

2. By Order dated August 1, 2017 (Doc. 11), all discovery is to be completed by April 2, 2018.

3. The parties have exchanged written discovery, but the scope of depositions of fact witnesses, the need for expert testimony, and the possibility of dispositive motions all depend on the anticipated ruling of the West Virginia Supreme Court in *Schoene v. McElroy Coal Company*, No. 17-0641.

4. In that case, the Court accepted certified questions from the United States Court of Appeals for the Fourth Circuit relating to, *inter alia*, the viability of common law claims in the presence of a waiver of subsidence damages and the scope of damages/remedies under the West Virginia Surface Mining Control and Reclamation Act.

5. Oral argument before the West Virginia Supreme Court in the *Schoene* matter was January 16, 2018.

6. The Court's ruling in *Schoene* will narrow the exact issues in the present case and will likely facilitate a potential settlement.

7. In the interest of judicial economy, as well as the possibility of settlement, the parties respectfully request a stay of all deadlines in this matter pending a decision in the *Schoene* matter.

8. Alternatively, the parties request a continuance of the discovery deadline until May 18, 2018 and the dispositive motion deadline until May 25, 2018.

WHEREFORE, the parties jointly and respectfully request that this Honorable Court grant the within Motion for Stay and/or Continuance.

Proposed Orders of Court are attached hereto.

Dated: March 7, 2018

Respectfully submitted:	
<u>/s/ Eric M. Gordon</u> Eric M. Gordon, Esq. (WV #6897) Berry, Kessler, Crutchfield, Taylor & Gordon 514 Seventh Street Moundsville, West Virginia 26041 304-845-2580 <i>Counsel for Plaintiffs</i>	<u>/s/ Rodger L. Puz</u> Melissa M. Barr (WV #8027) Dickie, McCamey & Chilcote, L.C. 2001 Main Street, Suite 501 Wheeling, WV 26003 304-233-1022  Rodger L. Puz (WV #9174) Dickie, McCamey & Chilcote, P.C. Two PPG Place, Suite 400 Pittsburgh, PA 15222 412-281-7272 <i>Counsel for Defendants</i>